

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MZA EVENTS, INC., :

Plaintiff, :

Index No.
Date Filed: May 11, 2021

-against- :

SUMMONS

Plaintiff designates New York County as the
place of trial.

ERICH BERGEN and 6W
ENTERTAINMENT, INC., :

Venue is proper pursuant to CPLR § 503

Defendants. :

Defendants reside in New York County

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To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Jurisdiction is based on CPLR §§ 301 and 302. Venue is proper in this Court pursuant to CPLR § 503, because Defendant 6W Entertainment, Inc.'s principal office is located in, and because Defendant Erich Bergen resides in, New York County.

Dated: New York, New York
May 11, 2021

**TROUTMAN PEPPER HAMILTON
SANDERS LLP**

By: s/Bennet J. Moskowitz

Bennet J. Moskowitz
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New York, New York
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Attorneys for Plaintiff MZA Events, Inc.

Defendants' Addresses:

Erich Bergen
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New York, New York 10027

6W Entertainment, Inc.
320 Riverside Drive 5F
New York, New York 10025

6W Entertainment, Inc.
171 W. 13th Street, PH10
New York, New York 10027

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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MZA EVENTS, INC.,	:	
	:	
Plaintiff,	:	Index No.
	:	
-against-	:	
	:	
ERICH BERGEN and 6W	:	COMPLAINT
ENTERTAINMENT, INC.,	:	
	:	DEMAND FOR JURY TRIAL
Defendants.	:	
	:	
	:	
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Plaintiff MZA Events, Inc. (“MZA Events”), by and through its undersigned counsel, for its Complaint against Defendants Erich Bergen (“Mr. Bergen”) and 6W Entertainment, Inc. (“6W Entertainment,” and together with Mr. Bergen, “Defendants”), alleges as follows:

NATURE OF ACTION

- This action arises from Erich Bergen’s reckless and unlawful attempt to derail a high-profile charity event that raises significant amounts of money to support HIV/AIDS prevention and care.
- On behalf of seven leading AIDS organizations from across the country, MZA Events was entrusted with producing the *AIDS Walk: Live at Home* virtual event scheduled for May 16, 2021. MZA Events has a decades-long track record of successfully producing hundreds of such major events for charities and social causes that have generated \$450 million for leading AIDS organizations.
- MZA Events hired Mr. Bergen to assist it in producing the 2021 *AIDS Walk: Live at Home* event, including a video of Sir Elton John and David Furnish accepting a Lifetime

Achievement Award from AIDS Walk. Mr. Bergen is an actor who, during the pandemic, has started producing live virtual events.

4. Even though the video was filmed, Mr. Bergen materially breached the contractual obligations that he owes MZA Events by refusing to provide MZA Events with a usable copy of the video.

5. Worse still, Mr. Bergen engaged in fraudulent conduct by failing to disclose material information to MZA Events relating to the production of the video, including that representatives for Sir Elton John and Mr. Furnish had conditioned the video being aired at the event on receiving a copy of the video and executing an agreement approving its content, and that Mr. Bergen did not honor these requests. MZA Events learned the foregoing from representatives for Sir Elton John and Mr. Furnish—not Mr. Bergen.

6. Mr. Bergen's unexcused—and inexcusable—conduct has caused and is causing MZA Events significant damages, including by limiting its ability to best serve these charitable organization, and risks tarnishing a sterling reputation that MZA Events and its principals have developed over 35-plus years and hundreds of successful events.

7. Most importantly, Mr. Bergen's conduct risks depriving dozens of leading AIDS organizations of critical funds that they need to confront the HIV/AIDS epidemic.

8. MZA Events has brought this lawsuit as a last resort. MZA Events and its representatives have repeatedly reached out to Mr. Bergen requesting a usable copy of the video so that MZA Events could obtain approval from representatives of Sir Elton John and Mr. Furnish. In response, Mr. Bergen has acted in bad faith. He has not taken these issues seriously, for example, responding by writing "LOL!" when MZA Events raised its concerns about the

harm that he is causing to its charitable partners. He otherwise has gone silent, refusing to provide a usable copy of the video or otherwise act appropriately and professionally.

PARTIES

9. Defendant Erich Bergen is an individual who, upon information and belief, resides in New York City.

10. Upon information and belief, Mr. Bergen's production company, Defendant 6W Entertainment, is a New York corporation with its principal place of business in New York City.

11. MZA Events is a California corporation with its principal place of business in Los Angeles.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to CPLR §§ 301 and 302, including because Defendants are present in and transact business within the State of New York and because Defendants committed tortious acts within the State out of which the causes of action arise.

13. Venue is proper in this Court pursuant to CPLR §§ 503(a) and (c), because 6W Entertainment, Inc.'s principal office is located in, and because Mr. Bergen resides in, New York County.

FACTUAL BACKGROUND

14. Craig Miller has been on the frontlines of the fight against HIV/AIDS since the 1980s. In 1985, he created the AIDS Walk fundraising model, beginning with AIDS Walk Los Angeles, and followed by AIDS Walk New York and AIDS Walk San Francisco. Through the company he co-founded, MZA Events, Mr. Miller has raised more than \$450 million for charities and social causes.

15. Erich Bergen is an actor best known for starring in the television show “Madam Secretary.” When that show ended and the pandemic began, Mr. Bergen started producing virtual events.

16. On or about May 18, 2020, MZA Events entered into a written agreement with Mr. Bergen to assist in producing two streaming charity events for AIDS Walk New York and AIDS Walk San Francisco (which ultimately became a single streaming event). A true and correct copy of this agreement is attached as Exhibit A and incorporated by reference herein. This agreement states in relevant part that:

- a. Mr. Bergen “will work with [MZA Event’s] staff to create content, produce musical numbers, recruit talent and craft the overall programs for livestreaming. He will further serve as point person in the ‘control room’ capacity during the live events.” Exh. A, ¶ 2.
- b. MZA Events owns the intellectual property to any content that Mr. Bergen creates for the events. Specifically:

5. Intellectual Property

All work product generated under this contract shall be the sole property of [MZA Events]. [Erich Bergen] shall not have the right to sell, distribute, share or otherwise disseminate any part of the PROJECTS without prior written approval from [MZA Events]. This excludes any and all footage (segments) containing appearances by Bette Midler and Anne Hathaway, which are being loaned to CLIENT by [Erich Bergen] for this event. CLIENT is granted permission to use these segments in perpetuity in the context of the “Live at Home” events but may not be used out of context or on their own.

Id., ¶ 5.

- c. In exchange for providing these services, MZA Events agreed to pay Mr. Bergen \$38,000.

17. Mr. Bergen performed his obligations under this agreement, the 2020 *AIDS Walk: Live at Home* event was a success, and MZA Events paid Mr. Bergen \$38,000 for his services.

18. For the 2021 *AIDS Walk: Live at Home* event, and in conjunction with and on behalf of its charitable partners, Mr. Miller tendered an invitation to David Furnish, Sir Elton John's husband and the head of the Elton John AIDS Foundation ("EJAF"), to honor Sir Elton John and Mr. Furnish with AIDS Walk's Lifetime Achievement Award for their amazing and heroic contributions in the campaign against AIDS.

19. Mr. Furnish responded in writing that he and Sir Elton John would accept the award. The parties moved forward with producing the video, which was going to be a highlight of the event. In reliance on this fact, MZA Events and its charitable partners devoted significant time, money and effort to tailoring a substantial portion of the programming to Sir Elton John and Mr. Furnish accepting the award. MZA Events and its charitable partners were also going to use the fact that Sir Elton John and Mr. Furnish were being honored to promote the event and generate donations.

20. MZA Events included Mr. Bergen in this process and discussed with him the prospect of Mr. Bergen serving in the same role for the 2021 *AIDS Walk: Live at Home* event that he had served a year earlier.

21. On April 13, 2021, the eve of the video being shot, Mr. Bergen sent an email to Mr. Miller, copying MZA Events' Director of Program and Entertainment Eddie Shapiro, in which he wrote that, since "each of us is desirous . . . to achieve the desired shoot tomorrow," he was "confirming" in writing that "you have offered and I have agreed to accept \$ 38,000 as co-producer (along with you and Eddie of MZA) of the approximately 60 minute program." Mr. Bergen wrote: "This is work for hire and MZA owns the raw footage and the finished work

product, as least as far as you and your company and me and my company are concerned.” Mr. Bergen wrote that the parties could later formalize the “full scope of my work.”

22. The next day, on April 14, 2021, the video of Sir Elton John and Mr. Furnish accepting the award was recorded.

23. However, Mr. Bergen never provided a copy of the video that could be used at the event. Instead, Mr. Bergen provided a copy of the video with a large “6W Entertainment” watermark across the video that rendered it unusable for the event and delivered it with only the following words: “taped and done.” Upon information and belief, Mr. Bergen provided the video in an unusable format out of spite and for the purpose of antagonizing MZA Events because MZA Events was unwilling to accommodate Mr. Bergen’s “my way or the highway” approach to producing the video.

24. On April 22, 2021, MZA Events emailed a representative for EJAF requesting approval to issue a press release on April 27, 2021 announcing that Sir Elton John and Mr. Furnish were accepting the AIDS Walk’s Lifetime Achievement Award at the event. This press release would help generate interest in the event and donations.

25. MZA Events and EJAF worked together to revise the proposed press release to incorporate new language proposed by EJAF about recent activities that EJAF and Sir Elton John had taken in the fight against AIDS. MZA Events and EJAF also collaborated on the list of recipients for the press release.

26. On April 23, 2021, EJAF responded that *AIDS Walk: Live at Home* did not have approval to issue the press release at that time and that, due to the upcoming Oscars ceremony, EJAF would circle back the following week. Based on the information it had available, MZA

Events believed that the video would still air at the event and continued along with its charitable partners to pour time, money and energy into the programming based on that understanding.

27. On May 6, 2021, EJAF followed up, writing that, because Mr. Bergen had never provided the video to representatives of Sir Elton John and Mr. Furnish for their approval, it could not be used at the event. EJAF wrote that it had understood from Mr. Bergen that he had deleted the video. On the same day, production counsel for MZA Events responded by expressing concern about the video not airing at the event—given that he knew the video had been recorded and had a watermarked copy of the video in his possession—and seeking more information.

28. On May 7, 2021, Elanzo Burgess, general counsel for Rocket Entertainment, wrote that prior to the recording of the video, he had informed Mr. Bergen in writing that the recording could only proceed based on his “clear understanding” that the parties would enter into an agreement approving the content of the video, and that Mr. Bergen had responded in writing: “This understanding is fully agreed, and we will provide the appearance agreement asap.” Mr. Burgess wrote, while he was happy to discuss these issues further, “we have not received any appearance agreement relating to the Video. Nor have we received a copy of the Video for approval.”

29. Mr. Burgess’ email was the first time that MZA Events had learned about this material information relating to the production of the video, including that: (1) Mr. Burgess had requested that Mr. Bergen provide an approval agreement and a copy of the video; (2) Mr. Bergen agreed and represented that he would do so as soon as possible; and (3) Mr. Bergen never provided Mr. Burgess with either an approval agreement or a copy of the video. Mr. Bergen did

not disclose any of this to MZA Events. Instead, upon information and belief, Mr. Bergen intentionally and willfully kept MZA Events in the dark.

30. On the same day, production counsel for MZA Events responded to Mr. Burgess' email by writing that: "Regrettably, Mr. Bergen, who is no longer associated with the project, never forwarded your e-mail, his response or this requirement to MZA. I am now attaching the appearance agreement. We can accommodate any edits or changes. I will get you a link to the video under separate cover."

31. MZA Events' litigation counsel then sent Mr. Bergen a letter requesting that, by May 8, 2021, he provide a copy of the video without the watermark and that, if he did not do so, MZA Events would have no choice but to take appropriate action, including by filing a lawsuit, to protect its charitable partners and itself. Mere minutes after being emailed the letter, Mr. Bergen wrote back: "LOL!" Mr. Bergen did not provide the video without the watermark or otherwise respond in substance by May 8 as requested.

32. On May 9, MZA Events' litigation counsel followed up by providing Mr. Bergen with a draft of this Complaint and advising him that, if he did not provide a usable copy of the video by noon on May 10, MZA Events would have no choice but to file a lawsuit. Mr. Bergen did not respond by this deadline.

33. Mr. Bergen already has caused substantial damage. His refusal to provide a usable video, which MZA Events owns and has the right to immediately possess, has prevented MZA Events and its charitable partners from using the fact that Sir Elton John and Mr. Furnish accepted the award to promote the *AIDS Walk: Live at Home* event, causing these charities to lose out on substantial donations that could help save lives. These damages will only increase unless Mr. Bergen immediately provides a copy of the video without the watermark.

FIRST CAUSE OF ACTION

(Breach of Contract Against Erich Bergen and 6W Entertainment)

34. MZA Events realleges paragraph 1 through 33 as if set forth in full.

35. On or about April 13, 2021, Mr. Bergen confirmed in writing that MZA Events, on the one hand, and Mr. Bergen and 6W Entertainment, on the other, agreed that Mr. Bergen would assist MZA Events in producing the *AIDS Walk: Live at Home* event scheduled for May 16, 2021, that any content he created is “work for hire,” that “MZA [Events] owns the raw footage and the finished work product,” and that, in exchange, Mr. Bergen would receive \$38,000 (the “Agreement”).

36. MZA Events has performed and is willing to perform all of its obligations under the Agreement.

37. Mr. Bergen has materially breached the Agreement by, among other things, not providing MZA Events with a copy of the video without a watermark.

38. As a result of Mr. Bergen’s material breaches of the Agreement, MZA Events has suffered damages in an amount to be proven in trial, but of at least \$1,050,000.

SECOND CAUSE OF ACTION

(Fraudulent Concealment Against Erich Bergen)

39. MZA Events realleges paragraph 1 through 38 as if set forth in full.

40. As someone hired by MZA Events to assist it in producing the *AIDS Walk: Live at Home* event, Mr. Bergen owed MZA Events a duty to disclose all material facts relating to the production of the event, including content created for the event.

41. There were multiple events that occurred in April and May 2021 that Mr. Bergen was obligated to disclose to MZA Events but failed to do so, including but not limited to the

following: (1) In advance of the April 14 recording of the video, a representative for Sir Elton John and Mr. Furnish informed Mr. Bergen in writing that, for the video to be aired at the *AIDS Walk: Live at Home* event, two conditions had to be met—he had to be provided with a copy of the video for approval and an approval agreement; (2) Mr. Bergen agreed in writing to those conditions, and represented that he would do so as soon as possible; and (3) Mr. Bergen never provided the representative for Sir Elton John and Mr. Furnish with either a copy of the video or an approval agreement.

42. This information that Mr. Bergen failed to disclose was material because, without Mr. Bergen satisfying these conditions, the video could not air at the *AIDS Walk: Live at Home* event, precluding MZA Events and its charitable partners from using this fact to generate interest in the event and donations to support HIV/AIDS prevention and care.

43. Mr. Bergen was under an obligation to disclose this material information but failed to do so.

44. MZA Events reasonably relied on Mr. Bergen's failure to disclose this material information to its detriment. MZA Events' reliance was reasonable because, among other things, it knew the video had been shot and it had a watermarked copy of the video in its possession. If Mr. Bergen had contemporaneously disclosed this and other material information, MZA Events would have, among other things, immediately apprised representatives of Sir Elton John and Mr. Furnish of the situation, provided them with an approval agreement, and tried to obtain and provide them with a copy of the video without a watermark. MZA Events also would not have continued to represent to its charitable partners that the video was going to be aired at the event and be promoted.

45. By concealing this information from MZA Events, Mr. Bergen benefited himself because he wanted to be the one who exclusively communicated and had the relationship with representatives of Sir Elton John and Mr. Furnish, not MZA Events, and wanted to be the one who creatively controlled the content and production of the video as opposed to MZA Events. Upon information and belief, Mr. Bergen did this because he believed this would lead to more business opportunities for himself going forward, including to usurp opportunities belonging to MZA Events.

46. Mr. Bergen fraudulently concealed this information with full knowledge that, without these conditions being satisfied, the video could not air at the event, and MZA and its charitable partners would be unable to use the fact that Sir Elton John and Mr. Furnish were accepting the award to promote the event and generate donations. For these and other reasons, MZA Events has been damaged by Mr. Bergen's fraudulent concealment in an amount to be determined at trial, but of at least \$1,050,000. MZA Events is also entitled to punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, MZA Events prays for judgment against Defendants, jointly and severally, as follows:

- (a) On the First and Second causes of action, compensatory damages in an amount to be determined at trial, but of at least \$1,050,000 plus all applicable interest, punitive damages, and injunctive relief, together with attorneys' fees and all costs and disbursements of this action; and
- (b) For such other and further relief as the Court may deem equitable, just and proper.

DEMAND FOR JURY TRIAL

Plaintiff MZA Events, Inc. hereby demands a jury trial on all issues.

Dated: May 11, 2021

Respectfully submitted,

TROUTMAN PEPPER HAMILTON
SANDERS LLP

By: s/ Bennet J. Moskowitz

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EXHIBIT A

LETTER OF AGREEMENT (Erich Bergen/MZA Events)

This letter constitutes an Agreement between MZA Events (hereinafter referred to as "CLIENT") and Erich Bergen (hereinafter referred to as "EB").

CLIENT agrees to retain EB to execute specific responsibilities under the guidelines outlined herein.

1. Term of Agreement.

The term of this Agreement begins on execution and is effective through and including July 20, 2020.

2. EB Services.

EB will co-produce the two streaming events, AIDS Walk New York Live at Home and AIDS Walk San Francisco Live at Home [event titles subject to change]. He will work with CLIENT's staff to create content, produce musical numbers, recruit talent and craft the overall programs for livestreaming. He will further serve as point person in the "control room" capacity during the live events.

3. EB as Independent Contractor.

EB acknowledges that he is an independent contractor and shall not represent himself as having any relationship to CLIENT other than that of an independent contractor. EB shall not represent to his employees or any third party that EB is other than a contractor for the CLIENT employed for the specific purpose of the contract.

4. Confidentiality & Approvals.

EB, his employees and agents will not share, distribute, sell or exchange any contact, giving or other business information provided by CLIENT or generated in association with PROJECTS with others.

5. Intellectual Property.

All work product generated under this contract shall be the sole property of CLIENT. EB shall not have the right to sell, distribute, share or otherwise disseminate any part of the PROJECTS without prior written approval from CLIENT. This excludes any and all footage (segments) containing appearances by Bette Midler and Anne Hathaway, which are being loaned to CLIENT by EB for this event. CLIENT is granted permission to use these segments in perpetuity in the context of the "Live at Home" events but may not be used out of context or on their own.

6. Non-compete.

EB agrees not to engage in a separate working relationship with CLIENT's benefitting organizations, GMHC or PRC without express written consent of CLIENT for a twelve month period from date of execution.

_____.

READ, APPROVED AND ACCEPTED:

MZA Events

NAME/TITLE:

DATE: May 18, 2020

SIGNATURE: _____

AND

Erich Bergen ("EB")

NAME: Erich Bergen

DATE:

SIGNATURE:

A handwritten signature in black ink, appearing to be 'EB' followed by a long horizontal stroke, positioned above a horizontal line.